IN THE HIGH COURT OF JUDICATURE AT BILASPUR (C.G.) Division Bench

M.A.No. 821 /2006

Appellant : **The Oriental Insurance Company Limited,
Through its Divisional Manager,
Malviya Nagar, Durg Distt. Durg (C.G.)**

V E R S U S

Respondents :

1. **Smt. Gouto Bai W/o Late Pancham Singh**
aged about 43 years.

2. **Kumari Bai D/o Late Pancham Singh**
aged about 22 years,

3. **Ashok Kumar S/o Late Pancham Singh**
aged about 18 years

4. **Pawan Kumar S/o Late Pancham Singh**
aged about 20 years

5. **Smt. Jugo Bai W/o Chediram**
aged about 45 years,

All above respondents are R/o Bandha Tola, Tah. Mohla, District - Rajnandgaon (C.G.)

6. **Premlal S/o Bisheshar Ram, Caste - Sinha**
aged about 28 years,
R/o Village - Khuteri, Police Station-Somni
District - Rajnandgaon (C.G.)
(Driver of Vehicle No. C.G. 07/Z.D./2338)

7. **Raghunandan Sahu S/o Not Known**
R/o Patan Road, Utai, Distt. - Durg (C.G.)

8. **Ashwani Kumar Gajendra**
S/o Bhikhariram Gajendra
R/o Gotatola, Distt. Rajnandgaon (C.G.)
(Owner of Vehicle No. C.G. 07/Z.D./2338)

P.R. No.....
Presented by Shri.....
dated.....

बी. सी. बेहरा
मण्डलीय प्रबंधक
दी ओरिएण्टल इंश्योरेंस कं. लि.

APPEAL UNDER SECTION 173 OF THE MOTOR VEHICLE ACT

CLAIM VALUE AWARDED BY THE TRIBUNAL RS. 5,10,000/-

The above named appellant respectfully begs to submit here as under :-

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(49)

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक M.A.No.821/06 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

D.B. Hon'ble Shri Dhirendra Mishra,
Hon'ble Shri Dilip R. Deshmukh, JJ.

05.07.2006

Appellant by Shri Abhishek Sinha, Advocate.

Heard on admission.

The appellant Insurance-Company has preferred this appeal under Section 173 of the Motor Vehicle Act as the learned Motor Accidents Claims Tribunal has passed the award of Rs.5,10,000/- and has settled the responsibility of satisfying the above award upon the Insurance-Company also.

2. The ground on which the appeal has been preferred is that at the time of accident the deceased were travelling in the vehicle as gratuitous passenger which is evident from the first information report which has been filed by the applicants themselves and as per Section 147 of the Motor Vehicle Act no liability can be fastened on the Insurance-Company for the claims on the application of legal heirs of such passengers.

3. We have heard the learned counsel for the appellant on admission. We have also perused the impugned award dated 31.3.2006.

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XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

4. The learned counsel for the appellant does not dispute that so far the correctness of the fact regarding passenger occupying the vehicle at the time of accident is concerned, in reply submitted by the Insurance-Company, the fact that the deceased-persons were gratuitous passengers has not been pleaded, and therefore, no specific issue was framed by the Tribunal on this count. However, learned counsel for the appellants submits that a general pleading was made by the Insurance-Company that the vehicle was being driven in breach of the policy condition at the relevant time, therefore, the Insurance-Company is not bound by the award.

4. Issue no.7 was framed by the Tribunal to the effect that whether the vehicle was being driven in breach of policy condition issued by the non-applicant No.3 (Insurance-Company) and if so to what effect? Dealing with this issue, the Court below has given a finding to the effect that the burden of proof of this issue is on the non-applicant No.3 (Insurance-Company). However, the Insurance-Company has not led any evidence to substantiate so as to discharge this onus and on the contrary as per document Ex.P.4, it is evident that the non-applicant No.3 (Insurance-Company) had insured the vehicle and the insurance was valid upto 21.09.2004 and the non-applicant No.1 was having valid driving licence which was effective upto 16.12.2005 and there is a finding to the effect that

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -3	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

the Insurance-Company has not even filed the insurance policy to prove the same. In the light of the above finding, the issue no.7 has been decided against the appellant.

5. In view of the finding of the learned Claims Tribunal regarding issue No.7, we find no substance in this appeal even for the purpose of admission, and therefore, the instant appeal is dismissed at the admission stage itself.

Sd/-
Dhirendra Mishra
Judge

Sd/-
Dilip Raosaheb Deshmukh
Judge